

E.6  
05/05/98



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
**OFFICE OF REGIONAL COUNSEL**  
**REGION 5**  
**77 WEST JACKSON BOULEVARD**  
**CHICAGO, IL 60604-3590**

**FACSIMILE TRANSMITTAL FORM**

**DATE:** 5/4/98  
**FAX RECIPIENT:** Gene Smary  
**DEPT/FIRM/AGENCY:** Warner Norross & Judd  
**FAX NUMBER:** 616-752-2500

**FAX SENDER:** Kathleen Schnieders, Assistant Regional Counsel  
**AGENCY:** U.S. EPA, Office of Regional Counsel  
**TELEPHONE:** 312.353.8912  
**FAX:** 312.886.0747

**SUBJECT:** Albion-Sheridan  
**NUMBER OF PAGES:** 3 including the cover sheet

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REGION 5  
77 WEST JACKSON BOULEVARD  
CHICAGO, IL 60604-3590

cc'd E6  
05/05/98

May 5, 1998

REPLY TO THE ATTENTION OF:

C-14J

**VIA FAX AND CERTIFIED MAIL**  
**RETURN RECEIPT REQUESTED**

Mr. Eugene E. Smary  
Warner Norcross & Judd  
900 Old Kent Building  
111 Lyon Street N.W.  
Grand Rapids, MI 49503-2487

RE: Response to Notice of Performance Delay at  
Albion-Sheridan Superfund Site

Dear Mr. Smary:

This letter is in response to the notice you provided in your April 17, 1998, letter on behalf of Cooper Industries, Inc., and Corning Inc., informing the United States Environmental Protection Agency ("U.S. EPA" or "EPA") of a delay in performing your obligations under the Unilateral Administrative Order ("UAO" or "the Order") number VW-'96-C-316.

After considering the three underlying reasons presented for the delay, EPA has determined that none inhibit your clients from continuing to perform their obligations under the UAO. I will discuss each issue in turn.

First, Decker Manufacturing ("Decker"), through a subsidiary known as C.D.C. Inc., has purchased land adjacent to the Site formerly owned by the Praters. Decker acquired this land at the request of EPA. It is my understanding that the Site plans call for the cap to extend onto this property, which necessitated its purchase to continue the remedy. Counsel for Decker, Michael Caldwell, has assured me that Decker will provide full access to this land, as required by section 104(e)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9601 et seq. ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986. Mr. Caldwell also provided me with a copy of his letter to you of March 2, 1998, expressing Decker's intention to provide that access. As I am sure you are aware, EPA is authorized by CERCLA § 104(e)(3) to order such access if necessary. However, with the assurances of Mr. Caldwell, such action is unnecessary at this time.

Second, the pending litigation between the parties is not a legitimate basis for delaying performance under the Order. Certainly, litigation has been a foreseeable outcome from the outset of EPA's involvement at the Site, and thus, it is not a legitimate excuse for delaying performance.

Finally, the State of Michigan has corrected the error in the title to the property. According to Gary Hartsuss, of the Real Estate Division of the Michigan Department of Natural Resources, the State canceled the erroneous deed, and that cancellation is recorded at the office of the Calhoun County Recorder of Deeds under number 2008-233. The State of Michigan has no interest in the property. If you have further questions, you may contact Mr. Hartsuss at 517-373-1252.

As EPA does not find that any of the reasons provided by your clients for their delay in performance under the Order are properly justified, they are obligated to continue performance. To that end, EPA suggests that your clients submit a work schedule by May 15th, and resume work by May 29, 1998. EPA feels strongly that the clean up should move forward on as close to the original schedule as possible. Doing so not only protects human health, but also will serve to control total costs.

If your clients are unwilling to resume work, the UAO does provide for civil penalties which would accrue daily and are enforceable in civil court. EPA has enjoyed a good working relationship with your clients throughout the implementation of the UAO, and I sincerely hope that does not change.

I am aware of the problematical nature of the relationship between your clients and Decker, and EPA would be willing to broker a joint meeting to address issues of access and scheduling. Such a meeting would involve Jon Peterson, On Site Coordinator, and me, and could take place at your earliest convenience. Please let me know as soon as possible if you would like to arrange a meeting.

As always, if you have any questions, you can reach me at 312-353-8912.

Sincerely,



Kathleen K. Schnieders  
Assistant Regional Counsel

cc: Jon Peterson, SR-6J  
Michael Caldwell, Fink Zausmer, for Decker Manufacturing  
Phillip Moilanen, Bullen, Moilanen, Klaasen & Swan, for Decker Manufacturing